

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

DAKOTA RESOURCE COUNCIL,
a non-profit North Dakota corporation,

Petitioner,

vs.

ENVIRONMENTAL PROTECTION AGENCY,
an agency of the United States,

Respondent.

No. 04-1994

JOINT STIPULATION OF
DISMISSAL

On April 26, 2004, Petitioner Dakota Resource Council filed a petition in this Court challenging the February 24, 2004, 'Memorandum of Understanding Between the State of North Dakota and the U.S. Environmental Protection Agency' (the ('MOU')). Petitioner filed this petition for review as a protective matter within the time-frame specified by section 307(b) of the Clean Air Act ('CAA'), 42 U.S.C. 7607(b).

EPA maintains that the MOU is not a 'final' action within the meaning of the judicial review provisions of the CAA, 42 U.S.C. § 7607, and the Administrative Procedure Act ('APA'), 5 U.S.C. § 704, and therefore the Court lacks jurisdiction to hear Petitioner's claim. EPA further maintains that its position is consistent with *Bennett v. Spear*, 520 U.S. 154 (1997), in that the MOU does not represent the consummation of the agency's decisionmaking process and does not determine rights or obligations.

Based on the foregoing, EPA agrees that it will not claim in any future action that the MOU is a final action that Petitioner Dakota Resource Council should have challenged within the applicable time for review set forth in CAA section 307(b). For the same reason, EPA agrees that

it will neither raise Petitioner's failure to pursue this petition for review challenging the MOU in any future action, nor claim that this petition, or Petitioner's agreement not to pursue this petition, prejudices Petitioner's right to challenge any future agency action.

Because EPA agrees not to assert in the future that the MOU is a final agency action as set forth above, Petitioner agrees to the stipulated dismissal of this action, without prejudice.

The Parties have contacted counsel for Intervenor North Dakota regarding this stipulation of dismissal and North Dakota has no objections.

Each party shall bear its own costs.

Respectfully submitted,

FOR RESPONDENT U.S. ENVIRONMENTAL
PROTECTION AGENCY:

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Assistant Attorney General
Environment and Natural Resources Division

Dated: 6/18/04

By: 

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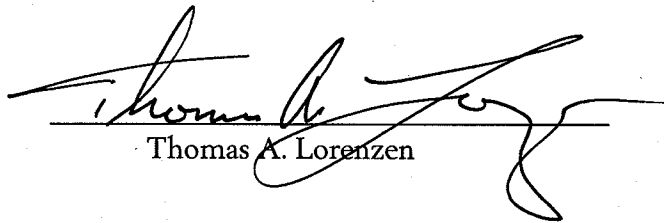
CERTIFICATE OF SERVICE

I hereby certify that, on this 18th day of June 2004, I caused copies of the foregoing Joint Stipulation of Dismissal to be served, by first-class mail, on the following:

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